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Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	Department (Board) of Juvenile Justice
Virginia Administrative Code (VAC) citation	6VAC35-150
Regulation title	Standards for Non-Residential Services Available to Juvenile and Domestic Relations District Courts
Action title	To perform comprehensive review of the regulation for clarity and improvement and to revise the regulation to reflect regulatory and policy changes since this regulation was amended in 2002.
Date this document prepared	May 15, 2008

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 36 (2006) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Purpose

Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.

The Standards for Non-Residential Services available to Juvenile and Domestic Relations District Courts, 6VAC35-150, establish minimum requirements for the operation of locally and state-operated court service units and for non-residential programs available to the juvenile and domestic relations district court, including those funded through the Virginia Juvenile Community Crime Control Act. The provisions for court service units include guidance for processing delinquency petitions at intake, making decisions whether to detain alleged delinquent juveniles, and supervising probationers and parolees. Additionally, the regulation establishes standards for the development, implementation, operation, and evaluation of the non-residential community-based programs and services, such as those established by the Virginia Juvenile Community Crime Control Act (§16.1-309.2 *et seq.* of the Code of Virginia), which provide treatment and supervision for juveniles, who are before the court or an intake officer, and are designed to divert juveniles from become further involved with the juvenile justice system.

The last comprehensive review of the regulation was completed in 2002. Since that time, the Board of Juvenile Justice (the "Board") has promulgated several other regulations as required by law. Sections of these regulations guide the operations of court service units, which are the primary subject of this regulation. Where applicable, those regulations should be clearly referenced; and this regulation should

be amended to streamline the applicability of each provision. Moreover, during the periodic review period, the regulation was reviewed in light of current statutes, regulations, and practices. As a result of this review, it was determined that a comprehensive review of and substantive changes to the regulation were necessary. It was further determined that this review should be done with the goals of enhancing the clarity of its regulation and achieving improvements that will be reasonable, prudent, and will not impose an unnecessary burden on its regulants or the public.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

The Board of Juvenile Justice is entrusted with general authority to promulgate regulations by §66-10 of the Code of Virginia, which states the Board may “promulgate such regulations as may be necessary to carry out the provisions of this title and other laws of the Commonwealth administered by the Director or the Department.”

Additionally, the Board of Juvenile Justice is mandated by §§16.1-233 and 16.1-309.9 of the Code of Virginia to issue regulations pertaining to court service units and other non-residential services. Section 16.1-233 of the Code of Virginia requires the Board to regulate court service unit staff, including their appointment and function, with the goal of establishing, as much as practicable, uniform services for juvenile and domestic relations courts throughout the Commonwealth. Moreover, §16.1-309.9 of the Code of Virginia requires the Board to regulate the “development, implementation, operation and evaluation of the range of community-based programs, services and facilities authorized” by the Virginia Juvenile Community Crime Control Act.

Need

Please detail the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. In addition, delineate any potential issues that may need to be addressed as the regulation is developed.

This regulation is essential to protect the public safety by providing for the supervision of delinquent juveniles. The regulation includes standards for both locally and state-operated court service units to ensure that “uniform services, insofar as is practical, will be available to juvenile and domestic relations district courts throughout the Commonwealth.” See §16.1-233 (C) of the Code of Virginia. The regulation provides guidance for processing alleged delinquent juveniles at intake, detaining delinquents, and supervising probationers and parolees in the community.

The regulation further protects the public safety by establishing standards for the development, implementation, operation, and evaluation of the non-residential community-based programs and services such as those established by the Virginia Juvenile Community Crime Control Act (“VJCCA”). See §16.1-309.2 *et seq.* of the Code of Virginia. Such VJCCA programs provide supervision and services to juveniles who are before the court or before a juvenile intake officer with the goal of preventing those juveniles from further penetrating the juvenile justice system.

Having clear, concise, and consistent requirements across localities promotes the health, safety, and welfare of citizens by ensuring consistency in services throughout the Commonwealth.

Substance

Please detail any changes that will be proposed. For new regulations, include a summary of the proposed regulatory action. Where provisions of an existing regulation are being amended, explain how the existing regulation will be changed.

The Department (Board) of Juvenile Justice proposes to conduct a comprehensive review of the regulation and, if appropriate, address any deficiencies found. The regulation will be reviewed and modifications proposed to ensure that it most effectively and efficiently supports its statutory purpose.

An advisory committee has been convened by the Department with individuals representing Department personnel and locally operated court services units. The Department (Board) of Juvenile Justice, through the advisory committee, intends to continue the review commenced during the periodic review process and anticipates the following changes:

- ❖ Updating the definition section and terms used for clarity and consistency with other regulations promulgated by the Board;
- ❖ Removing unnecessary verbiage;
- ❖ Amending the background check section in light of recent statutory changes;
- ❖ Clarifying requirements for volunteers and interns;
- ❖ Reviewing and streamlining requirements for all reports to the court;
- ❖ Determining whether the cross-reference to the “Guidelines for Custody Investigations” is needed;
- ❖ Clarifying if and when procedures should be required for handling non-department funds;
- ❖ Incorporating appropriate cross-references to statutes, regulations, and guidance documents, amended, enacted, or promulgated since the last review;
- ❖ Formalizing the process for obtaining a waiver of regulatory provisions;
- ❖ Reviewing duties of court services unit staff in light of legislative changes since 2002.

Alternatives

Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action. Also, please describe the process by which the agency has considered or will consider other alternatives for achieving the need in the most cost-effective manner.

Retaining the regulation in its current form was considered. The Department also reviewed whether the necessary revisions could be accomplished through Department procedures, guidance documents, or training rather than by revising the regulatory provisions. Specifically, it was considered whether the changes could be incorporated into the Department’s Division of Community Programs’ “Operations Manual” for court services units through which the Department provides guidance to court service units. However, the Operations Manual does not rise to the level of regulatory requirement.

Thus, given statutory and regulatory changes since 2002, the Department determined that a comprehensive review and updating of the regulation is essential for ensuring consistency and avoiding

ambiguity in interpretation in court service units across the Commonwealth. However, the Department will continue to review whether the Operations Manual may be an appropriate vehicle for communicating expectations, outlining best practices, and providing procedural guidance when the added authority of a regulation is not required.

Public participation

Please indicate the agency is seeking comments on the intended regulatory action, to include ideas to assist the agency in the development of the proposal and the costs and benefits of the alternatives stated in this notice or other alternatives. Also, indicate whether a public hearing is to be held to receive comments on this notice.

The agency is seeking comments on the intended regulatory action, including but not limited to: 1) ideas to assist in the development of a proposal; 2) the costs and benefits of the alternatives stated in this background document or other alternatives; and 3) potential impacts of the regulation. The agency is also seeking information on impacts on small businesses as defined in §2.2-4007.1 of the Code of Virginia. Information may include: 1) projected reporting, recordkeeping, and other administrative costs; 2) probable effect of the regulation on affected small businesses; and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments may do so by mail, email, or fax to **Patricia Rollston, Legislative Analyst at Virginia Department of Juvenile Justice, P.O. Box 1110, Richmond, Virginia 23218-1110, by electronic mail at patricia.rollston@djj.virginia.gov, via telephone at (804) 786-4194, or via facsimile at (804) 371-0773.** Written comments must include the name and address of the commenter. In order to be considered, comments must be received by the last day of the public comment period.

A public hearing will not be held.

Participatory approach

Please indicate, to the extent known, if advisers (e.g., ad hoc advisory committees, technical advisory committees) will be involved in the development of the proposed regulation. Indicate that 1) the agency is not using the participatory approach in the development of the proposal because the agency has authorized proceeding without using the participatory approach; 2) the agency is using the participatory approach in the development of the proposal; or 3) the agency is inviting comment on whether to use the participatory approach to assist the agency in the development of a proposal.

The agency is using a participatory approach to amend this regulation and has begun organizing an advisory committee. Individuals who will be invited to participate in the advisory committee will represent the Department of Juvenile Justice, locally operated court service units, and the Board of Juvenile Justice. The Department may consult with experts on technical issues.

Family impact

Assess the potential impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one’s spouse, and one’s children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

This regulatory action should have a positive impact on families when members receive services through any court services unit or other applicable non-residential services. To the extent the regulation improves those services or promotes health and safety in those services, they should have a positive impact on families. The regulation will serve to bolster family relationships and communities given the focus to prevent delinquency and promote youth development. The regulation is not expected to have any impact on disposable family income.

Periodic review – Public comment

If this NOIRA is not the result of a periodic review of the regulation, please delete this entire section.

If this NOIRA is the result of a periodic review, please (1) summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and (2) indicate whether the regulation meets the criteria set out in Executive Order 36, e.g., is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable.

Commenter	Comment	Agency response

No comments from the public were received during the periodic review’s public comment period.

The regulation continues to meet the criteria set out in Executive Order 36 in that it is necessary for the protection of public health, safety, and welfare. However, amendments are necessary for the regulation to be more clearly written and more easily understandable.

Periodic review – Discussion

If this NOIRA is not the result of a periodic review of the regulation, please delete this entire section.

If this NOIRA is the result of a periodic review or if the periodic review is to be performed in combination with the NOIRA, please include a discussion of the agency’s consideration of: (1) the continued need for the rule; (2) the complexity of the regulation; (3) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (4) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation. Also, include a discussion of the agency’s

determination whether the regulation should be amended or repealed, consistent with the stated objectives of applicable law, to minimize the economic impact of regulations on small businesses.

The regulation of this process continues to be necessary as it is mandated by §§16.1-233 and 16.1-309.9 of the Code of Virginia. The regulation establishes minimum requirements for the operation of locally and state-operated court service units and for non-residential programs available to the juvenile and domestic relations district court, including those funded through the Virginia Juvenile Community Crime Control Act. The provisions for court service units include guidance for processing delinquency petitions at intake, making decisions whether to detain alleged delinquent juveniles, and supervising probationers and parolees. Additionally, the regulation establishes standards for the development, implementation, operation, and evaluation of the non-residential community-based programs and services, such as those established by the Virginia Juvenile Community Crime Control Act (§16.1-309.2 *et seq.* of the Code of Virginia), which provide treatment and supervision for juveniles, who are before the court or an intake officer, and are designed to divert juveniles from become further involved with the juvenile justice system.

Amendments are necessary for the regulation to be more clearly written and more easily understandable. The last comprehensive review of the regulation was completed in 2002. Since that time, the Board of Juvenile Justice (the “Board”) has promulgated several other regulations as required by law. Sections of these regulations guide the operations of court service units, which are the primary subject of this regulation. The regulation will be amended to ensure that it does not overlap or conflict with state law or regulation by including appropriate and clear cross-references to streamline and clarify the applicability of each provision. The regulation, after amendment, will be duplicative only to the extent necessary to implement applicable statutory provisions. Thus, the Board of Juvenile Justice initiated this NOIRA after a periodic review was conducted on the regulation in accordance with the applicable statute and executive order.